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**THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

SUPERIOR LINEN, LLC,

Debtor.

Case No.: BK-S-16-15388-mkn
Chapter: 11

**LIMITED OPPOSITION TO MOTION
TO REJECT UNEXPIRED LEASE RE:
13TH STREET PROPERTY SUBLEASE**

**Hearing Date: February 1, 2017
Hearing Time: 9:30 a.m.**

13th Street Property, LLC, a Nevada limited liability company and 13th Street Properties North, a Nevada limited liability company (collectively “13th Street”), by and through their counsel of the law firm of Holland & Hart LLP, hereby submits this limited opposition to Motion to Reject Unexpired Lease RE: 13th Street Property Sublease (the “Opposition”).

13th Street’s Opposition is based upon the following Memorandum of Points and Authorities, the Exhibits attached hereto and incorporated herein, the declaration of Perry “Bob” Shirley (the “Shirley Dec.”) filed contemporaneously with this Opposition, the pleadings and papers on file with this Court, and any argument by counsel this Court may entertain.

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MEMORANDUM OF POINTS AND AUTHORITIES**I. SUMMARY**

13th Street ask this Court, at a minimum, to continue Debtor's motion until such time as the Debtor seeks to confirm a plan, wherein feasibility is a central issue. Alternatively, the Court should deny the Debtor's motion at this time, without prejudice, to allow the Debtor to stabilize its financial condition, and not incur the additional monetary burden it would create by termination of the sublease. This result is justified, as there are material issues regarding the Debtor's business judgment in seeking to terminate the sublease.

Debtor suggest the termination is based on business judgment. Yet, this position is conclusory and unsupported. The Debtor fails explain or provide support as to how the termination of the sublease is its best business judgment, given that terminating the sublease: (1) adds an additional net monthly burden to the Debtor, (2) results in the Debtor incurring the costs and time to move the equipment from the Property to its Mitchell location; (3) results in the Debtor mothballing the 13th Street, leaving it subject to looting and vandalism, which would be the Debtor's burden to bear, and (4) terminates a lease with a putative potential competitor who pays Debtor's monthly rent; whose primary business is purportedly dry cleaning, is not yet operational, and will operate a facility that is 1/10th the size. These issue are especially concerning given the current financial free fall the Debtor remains in post-petition, as seen in its November 2016 Monthly Operating Report.

13th Street is owned by Bob and Susan Shirley who retired long ago. *See Shirley Dec.* The rents from the 13th Street Property are their primary source of income. *Id.* Based on history, a gap in payment of rents and occupancy of the Property is financially disastrous to the Shirley's. *Id.* 13th Street seeks a continuum of occupancy at the 13th Street facility through plan confirmation, which would allow 13th Street to mitigate some potential damages.

To be clear, 13th Street takes no firm position by and between the Debtor and its Subtenant. 13th Street's interest is in continuing to receive rents. Certainly, as a matter of law, the Debtor could, through plan confirmation, continue to lease the Property. However, if the Debtor subsequently rejects 13th Street's Lease, at plan confirmation, the extended vacancy

1 created by the rejection of the sublease at issue, severely restricts 13th Street's ability to
2 mitigate its damages by finding a new tenant.

3 **II. ADDITIONAL FACTS**

4 13th Street owns property located at 125 S. 13th Street, Las Vegas, Nevada (the
5 "Property").

6 There is no dispute regarding the 2010 Lease between Debtor and 13th Street, which is
7 attached to the Declaration of Robert Smith Doc # 165, Exhibit 1 (the "Lease"). Pursuant to the
8 Lease, the Lease expires in February 2020; approximately three years. *Id.* The current base
9 rental rate is \$8,400 per month. *Id.* Under the Lease, the Debtor is required to maintain the
10 building and common area, maintain insurance, and pay utilities associate with the property. *Id.*
11 Simple math reflects at three years remaining on the Lease, the face value of the lease is no less
12 than \$302,400.

13 In July 2011, the Debtor vacated the 13th Street property. *Shirley Dec.* During this
14 time, vandals stripped the building coolers, piping, electrical wiring, and caused other damages.
15 *Id.* 13th Street believes if the Property is vacated, the same will occur again. *Id.*

16 On or about January 8, 2013, Superior and 13th Street entered into the First Amendment
17 to 13th Street Laundry Triple Net (NNN) Lease Agreement ("1st Amend"). Attached hereto as
18 **Exhibit A** is a true and correct copy of the 1st Amend. This amendment to the Lease allowed
19 flexibility for dry cleaning to be performed at the Property.

20 On July 14, 2014, Debtor sought and obtained from 13th Street a letter agreement
21 ("Letter Agreement"). Attached hereto as **Exhibit B** is a true and correct copy of Debtor's
22 Letter Agreement. The Letter Agreement provided consent by 13th Street to Debtor to sublease
23 the property to New Image Dry Cleaning, LLC, and to allow the subtenant to use the Property
24 as a dry cleaner.

25 Through these transaction, upon information and belief, the subtenant intended to use
26 the Property as a dry cleaner. *Shirley Dec.*

27 Upon information and belief, until very recently, the subtenant did not receive County or
28 City approval to commence commercial dry cleaning. *Shirley Dec*

In December 2015, 13th Street experienced a fire. *Shirley Dec.*

Upon information and belief, 13th Street has or is nearly completely repaired from the fire. *Shirley Dec.*

On September 30, 2016, the Debtor file its petition for bankruptcy protection. *See* Doc #1. Therefore, the Debtor's period of exclusivity - 120-days – runs on January 28, 2017.

On January 18, 2017, the Debtor filed its November 2016 Monthly Operating Report (“November MOR”). *See* Doc #198, to assist the Court, a copy of the November MOR, pages 1 – 10 which constitutes Summary of information is attached hereto as **Exhibit C**; the remaining 64 pages of supporting documents were excluded for brevity but will be supplied on request. The Debtor has only \$13,648 of cash on hand and account receivables of \$1,301,236. *Id.*, page 1. In contrast, the November MOR shows Debtor having a negative profit of (\$1,392,334) and post-petition liabilities in excess of \$3,867,685. *Id.*, page 1 (emphasis added). Moreover, the cumulative net profits, for the case to date, is a loss of (\$2,316,543). *Id.*, page 3.

In the face of the Debtor's final free fall, post-petition, the Debtor does enjoy rental income associated with the Property of approximately \$9,784 per month based on its sublease. *See November MOR*, page 9.

As of the filing, Superior has not paid 13th Street the January rents. *Shirley Dec.*

III. ARGUMENT

The Debtor, with Court approval, may assume or reject any executory contract or unexpired lease. *See* 11 U.S.C. §365. The statute does not provide a standard to be applied in determining the propriety of the trustee's decision to assume or reject. *Collier on Bankruptcy*, 16th Edition, P 365.03[2]. Yet, the decision may have significant consequences for the estate. *Id.* Under the Code, most courts have applied a "business judgment" test to trustees' decisions to assume or reject contracts or leases. *Id.* The Court of Appeals for the Ninth Circuit has adopted an even broader reading of the business judgment rule. *Id.*, citing *In re Pomona Valley Medical Group*, 476 F.3d 665 (9th Cir., 2007). The Court held: In reviewing a rejection motion, the bankruptcy court should presume that the debtor in possession "acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the

1 bankruptcy estate" and should approve rejection **unless** the "*conclusion that rejection would be*
 2 *advantageous is so manifestly unreasonable that it could not be based on sound business*
 3 *judgment, but only on bad faith, or whim or caprice.*" *Id.* (emphasis added).

4 Granted, the adverse effects on the other lease party (i.e. 13th Street) is not relevant
 5 unless the effect is so disproportionate to the estate's prospective advantage that it shows
 6 rejection could not be a sound exercise of business judgment. *See Collier on Bankruptcy*, 16th
 7 Edition, P 365.03[2].

8 Furthermore, *if the direct gain in value to the reorganized debtor does not make up in*
 9 *creditor recoveries* for the dilution in creditor recoveries resulting from the rejection damage
 10 claim, then absent some other consideration favoring rejection to facilitate the reorganization or
 11 to enhance value indirectly, the court may consider withholding approval of the rejection as
 12 manifestly unreasonable. *Id.* (emphasis added).

13 Debtor's November MOR, post-petition, shows the Debtor is in a financial free fall.
 14 The overriding business judgment issue before this Court, regarding the subject sublease, should
 15 be, does the requested rejection bring a financial benefit to the Debtor. As a preliminary point,
 16 rejecting the sublease, creates a claim¹ by the subleasee that dilutes the creditor pool. The
 17 Debtor offers nothing to support the rejection, creates a net greater value for creditors that are
 18 being diluted as a result of the requested rejection. Therefore, the Court should withhold
 19 approval of the Motion.

20 Debtor currently enjoys the subtenants monthly payment of approximately \$9,784.
 21 These monies offset the Debtor's obligation 13th Street under the Lease. The Debtor is very
 22 clear, it does not intend to reject – at this time – the lease with 13th Street. Therefore, the
 23 Debtor would be subject to continuing to pay the lease payment to 13th Street; a net increase to
 24 Debtor's operational cost.

25 The Debtor indicates it is exercising its business judgment to (1) frustrate a potential
 26 upstart competing business, and (2) indicates it needs equipment for operations. *See Doc #164*,

27 _____
 28 ¹ The Debtor seeks nunc pro tunc relief as of December 2017. It is unclear if the intent is to
 provide other creditors reduced dilution by employing 11 U.S.C. §502(b)(6) to the subleasee.

1 pg. 4-5, ¶14. Yet, the Debtor provides no support or quantification as to how these issues create
2 a net financial benefit to the Debtor in the face of a monthly increase of \$9,784 to the Debtor,
3 when the Debtor appears to be in financial free fall.

4 First, with regard to the upstart of a competing business, the Debtor fails to include the
5 fact that the potential competitor has not operated in the Property for nearly a year, due to the
6 fire, and the Lease related documents Superior entered regarding this potential competitor
7 clearly suggest an intent to perform dry cleaning services at the facility versus laundry.
8 Furthermore, the Debtor's facility at Mitchell is over 100,000 square feet in size, whereas
9 Property is approximately 1/10th this size. There is no support to suggest this potential upstart
10 of a competing business, under business judgment, justifies an immediate net monthly increase
11 of \$9,784 to the Debtor.

12 Consider, as an option, that at the time of confirmation the Debtor could terminate the
13 sublease of the upstart of a competing business, creating the same result, without incurring the
14 monthly increase of \$9,784 in the interim. *Arguably*, the business decision to eliminate a
15 competitor by removing its place of operation is the same if the Debtor terminated now, or at
16 the time of confirmation. By waiting, Debtor enjoys the benefit of the sublease's continued
17 cash-flow to assist Debtor financially.

18 Second, with regard to the removal of equipment to the Mitchell property, assuming the
19 Debtor needs the equipment to perform certain new contracts, there is no indication of the net
20 profitability of said new contracts to justify the expense of (1) the immediate monthly increase
21 of \$9,784 to the Debtor and (2) the direct and immediate cost of relocating the equipment.

22 According to the November MOR, the Debtor had a cash balance of less than \$14,000.
23 Practically speaking, depending on the equipment the Debtor intends to move, can Debtor
24 actually afford to make the move and make the equipment operational at the Mitchell property?
25 No estimate is provided regarding the cost of the move or the resulting net benefit derived as a
26 result. The Debtor is clear it does not intend to use the equipment at the 13th Street Property, if
27 the Court grants its termination of the sublease. Therefore, moving equipment is a real and
28

1 immediate cost to the Debtor, that it would have to timely earn back to justify the expense,
2 under reasonable business judgment.

3 According to the November MOR, Debtor does not have positive cash flow to make its
4 lease payments of \$9,784 to 13th Street upon termination of the sublease.² Unfortunately,
5 Debtor's inability to pay the Lease payment to 13th Street may be true whether the sublease is
6 rejected or not. The rejection of the sublease, at this time, only further compounds the Debtor's
7 losses.

8 Taken together, if the Court finds the rejection is "...manifestly unreasonable that it
9 could not be based on sound business judgment, but only on bad faith, or whim or caprice", it
10 can deny the motion. As noted above, there are clear financial impacts to the Debtor, if the
11 Court grants the rejection at this time. The November MOR suggests the Debtor is in a post-
12 petition financial free fall. Without further information, increasing the Debtor's net burden is
13 unreasonable at this time and is unsound business judgment.

14 13th Street would suggest, the Debtor's motion, at this time, is a bit rash. 13th Street
15 would further suggest, at a minimum, a decision on Debtor's motion should be continued until
16 such time as the Debtor confirms a plan of reorganization, which includes an element of
17 feasibility. Alternatively, the Court could deny the Debtor's motion without prejudice, to allow
18 the Debtor time to stabilize its financial free fall, and determine if terminating the sublease is a
19 proper exercise of business judgment based on sound financial and logistical principals.

20 Finally, the effect on 13th Street – the Shirley's – is not relevant *unless* the effect is so
21 disproportionate to the estate's prospective advantage. Here the Debtor has not clearly
22 presented the advantage created by terminating the sublease at this time. Given the Debtor's
23 financial free fall, there is a material question if the Debtor will (or has the ability to) pay the
24 13th Street's lease payments going forward. Ultimately, if the Debtor rejects the 13th Street
25 lease, 13th Street is an unsecured creditor with little chance of recovery. Moreover, if the

26
27 ² For example, based on the November MOR, Debtor received \$9,784 in rent and had net cash on
28 hand of \$13,648. Without said rent payment, Debtor would have had \$3,864 cash on hand
(\$13,648 - \$9,784) and would have been unable to pay the \$9,784 in rent to 13th Street.

1 sublease is terminated – and it is clear the Debtor does not intend to operate at the 13th Street
2 Property – the Property becomes vacant. Without a continuum of tenancy it creates a
3 substantial burden on 13th Street to relet the property, as well as potential for vandalism.
4 Therefore, granting Debtor’s motion at this time disproportionately harms 13th Street, when the
5 Debtor has failed to show any clear prospective advantage by terminating the sublease.

6 **IV. CONCLUSION**

7 The Debtor seeks to terminate a sublease. There is no indication, that this relief will
8 result in net positive cash flow to the Debtor. For this Debtor, this is particularly important, as
9 the Debtor appears to be in financial free fall post-petition.

10 By terminating the sublease, the Debtor is going to increase its net monthly obligation,
11 because it is no longer receiving offsetting rents from its subtenant. As part of its reason for
12 terminating the sublease, the Debtor seeks to move equipment, which would result in additional
13 direct and immediate costs to the Debtor. Given the Debtor’s November MOR, it is not clear
14 the Debtor has the ability to pay this immediate and on-going net increase in expenses and the
15 cost to move the equipment. This raises the question as to the Debtor’s business judgment in
16 seeking to terminate the sublease. Seeking additional post-petition financing to address this
17 financial burden is merely “robbing Peter to pay Paul” and is not a cure for unsound business
18 judgment.

19 The Debtor also seeks to terminate the sublease to prevent an upstart competitor.
20 Whether the Debtor terminates now or the future, it appears to produce the same result – the
21 upstart competitor loses its facility and can no longer compete. Also, given the nature and size
22 of the Debtor’s business versus the upstart competitor, there is a question if the threat is real.
23 This raises the question as to the Debtor’s business judgment of seeking the relief now in light
24 of the financial impact on the Debtor, as well as the other creditors.

25 In short, this Court, at a minimum should continue Debtor’s motion until such time as
26 the Debtor seeks to confirm a plan, wherein feasibility is a central issue. Alternatively, the
27 Court should deny Debtor’s motion at this time, without prejudice, to allow the Debtor to
28 stabilize its financial condition, without incurring the additional burden.

1 Finally, granting this motion will result in an increase net burden on the Debtor and a
2 vacancy at the 13th Street facility. The increase burden puts 13th Street in harm's way, as there
3 is a clear question as to whether the Debtor can continue to pay the rent and perform its other
4 obligations. The Debtor offers nothing to quantify what, if any, net advantage the termination
5 would create to its benefit and the benefit of creditors. By creating a vacancy at the property, 13th
6 Street it creates a disproportionate disadvantage for 13th Street to preserve and relet the
7 Property; thus a continuum of operations at the property is preferred.

8 DATED this 18th day of January, 2017

9 HOLLAND & HART LLP

10 /s/ Lars K. Evensen, Esq.

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CERTIFICATE OF SERVICE

1. On the 18th day of January, 2017 I served the following document(s) (*specify*):

**LIMITED OPPOSITION TO MOTION TO REJECT UNEXPIRED LEASE RE:
13TH STREET PROPERTY SUBLEASE**

2. I served the above-named document(s) by the following means to the persons as listed below: (*Check all that apply*)

☒ a. ECF System (*You must attach the "Notice of Electronic Filing", or list all persons and addresses and attach additional paper if necessary*)

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☐ **b. United States mail, postage fully prepaid (*List persons and addresses. Attach additional paper if necessary*)**

☐ **c. Personal Service (*List persons and addresses. Attach additional paper if necessary*)**

I personally delivered the document(s) to the persons at these addresses:

- ☐ For a party represented by an attorney, delivery was made by handing the document(s) to the attorney or by leaving the documents(s) at the attorney's office with a clerk or other person in charge, or if no one is in charge by leaving the documents(s) in a conspicuous place in the office.
- ☐ For a party, delivery was made by handing the document(s) to the party or by leaving the document(s) at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

☐ **d. By direct email (as opposed to through the ECF System) (*List persons and email addresses. Attach additional paper if necessary*)**

Based upon the written agreement of the parties to accept service by email or a court order, I caused the document(s) to be sent to the persons at the email addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **e. By fax transmission (*List persons and fax numbers. Attach additional paper if necessary*)**

Based upon the written agreement of the parties to accept service by fax transmission or a court order, I faxed the document(s) to the persons at the fax numbers listed below. No error was reported by the fax machine that I used. A copy of the record of the fax transmission is attached.

☐ **f. By messenger (*List persons and addresses. Attach additional paper if necessary*)**

☐ I served the document(s) by placing them in an envelope or package addressed to the persons at the addresses listed below and providing them to a messenger for service.

(A declaration by the messenger must be attached to this Certificate of Service).

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 18th day of January, 2017

/s/ Alexis Stajkowski

SIGNATURE OF DECLARANT

Exhibit A

Exhibit A

FIRST AMENDMENT TO 13TH STREET LAUNDRY TRIPLE NET (NNN) LEASE AGREEMENT

This First Amendment to 13th Street Laundry Triple Net (NNN) Lease Agreement ("Amendment"), dated as this ___ day of December, 2012, by and between 13th Street Property LLC and 13th Street Properties North LLC (collectively "Landlord") and Superior Linen LLC ("Tenant" and together with Landlord, individually, a "Party" and collectively, the "Parties").

WITNESSETH

WHEREAS, Landlord and Tenant are parties to that certain 13th Street Laundry Triple Net (NNN) Tenant Lease Agreement ("Lease");

WHEREAS, Tenant desires to perform dry cleaning services as an additional permitted use pursuant to the terms and provisions of the Lease; and

WHEREAS, Landlord desires to grant the additional permitted use pursuant to the terms and conditions hereof; and

WHEREAS, the Parties desire to amend the Lease Agreement in other respects as set forth herein.

NOW THEREFORE, based upon the foregoing, and in consideration of the mutual agreements, covenants, and conditions as contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree that the original Lease Agreement shall be amended as follows:

AMENDMENT

1. **Definitions.** Capitalized terms in this Amendment shall have the meaning prescribed to such terms in the Lease, unless otherwise defined herein.

2. **Amendments to the Lease.** The Lease is hereby amended as follows

(a) Article 1.7 of the Lease is hereby deleted in its entirety and replaced with the following:

ARTICLE 1.7 TENANT'S PERMITTED USES: Commercial Laundry and Dry Cleaning.

(b) Article 6.1 of the Lease is hereby deleted in its entirety and replaced with the following:

ARTICLE 6.1 "Tenant's Permitted Use" Tenant shall be entitled to use, occupy and sublet the Property for operating a commercial laundry and dry cleaning facility in accordance

with applicable law. The Property is leased to Tenant solely for the Tenant's Permitted Use and for no other use whatsoever. Tenant shall not use or suffer to be used the Property, or any portion thereof, for any other purpose or purposes whatsoever, without Landlord's written consent therefore first had and obtained, which consent may be withheld in Landlord's sole and absolute discretion.

6.1.1 Dry Cleaning Processing. Tenant further agrees that notwithstanding Tenant's obligations as specifically set forth in Article 6.2 hereof, Tenant covenants and agrees that it shall not use the chemical substance tetrachloroethylene, also known as perchloroethylene ("PERC"), in processing the dry cleaning, but shall utilize hydro-carbon based processing for all dry cleaning on the Property.

6.1.2 Change in Solvents. Any and all dry cleaning solvents used by Tenant at the Property shall be approved in advance by Landlord in writing, which approval shall be granted or denied in Landlord's reasonable discretion. If Tenant intends to change any dry cleaning solvent it uses at the Property, Tenant must first notify Landlord in writing and Landlord must give Tenant approval in writing prior to any such change, which approval shall be granted or denied in Landlord's reasonable discretion.

6.1.3 Spill Containment. Any and all dry cleaning machinery and systems and dry cleaning solvent at the Property shall be placed, at all times, on a spill containment pan or pans designed and constructed to eliminate leaks and spills of dry cleaning solvents and other Hazardous Materials or shall be designed by the manufacturer of such machinery and systems to include such spill containment pan or pans as part of the machinery or system.

3. **Full Force and Effect.** Except as specifically set forth herein, the terms and conditions of the Lease shall remain in full force and effect, and are hereby ratified and affirmed.

4. **Ratification.** Landlord and Tenant each hereby represent and warrant to the other that (i) the execution and delivery of this Amendment has been fully authorized by all necessary corporate or limited liability company action and (ii) the person executing this Amendment has the requisite authority to do so and has the authority and power to bind Landlord or, as the case may be, Tenant on whose behalf such party has signed.

5. **Conflict.** In the event of any conflict between the terms of this

Amendment and the terms of the Lease, it is expressly agreed that the terms of this Amendment shall control.

6. Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. A facsimile or electronic form of an original signature shall be deemed an original signature.

7. Governing Law. This Amendment shall be governed by and construed under the law of the State of Nevada.

[Remainder of Page Intentionally Left Blank; Signatures to Follow]

Jan 08 2013 3:39PM

HP LASERJET FAXSHIRLEY

7024584747

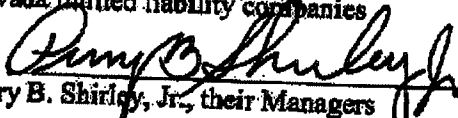
page 4

IN WITNESS WHEREOF, Landlord and Tenant have caused this Amendment to be executed as of the day and year first above written.

AGREED:

LANDLORD

13TH STREET PROPERTY LLC and 13TH STREET PROPERTIES NORTH LLC,
Nevada limited liability companies

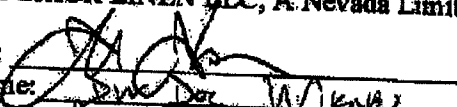
By: 
Perry B. Shirley, Jr., their Managers

Executed at January 6th 2013 On _____

Address 3634 Darren Thonkin Way LV, NV 8912

TENANT

SUPERIOR LINEN LLC, A Nevada Limited Liability Company

By: 
Name: Eric Doe Title: MANAGER
Its: FIRM

Executed at _____

Address _____

On January 8th

5915698_3.DOCX

Exhibit B

Exhibit B



SUPERIOR

July 1, 2014

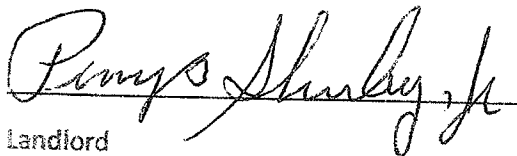
Re: Approval to sublet 125 S. 13th Street property to New Image Dry Cleaning, LLC.

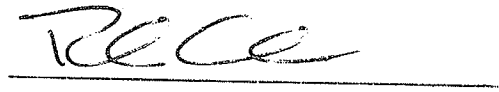
This approval should be used as consent by Landlord to allow Tenant (Superior Linen, LLC) to sublet part or all of the premises, located at 125 S. 13th Street under lease 13th STREET LAUNDRY TRIPLE NET (NNN) TENANT LEASE AGREEMENT 125 S. 13th Street Las Vegas, Nevada 89101 to New Image Dry Cleaning, LLC.

Landlord further understands and consents to the Subtenants' Permitted Use as a dry cleaner.

Subtenant must secure written Approval by Landlord for the use of any Dry Cleaning Solvents. *RES*
PL

Further, this consent does not relieve Tenant of its obligations under 13th STREET LAUNDRY TRIPLE NET (NNN) TENANT LEASE AGREEMENT 125 S. 13th Street Las Vegas, Nevada 89101.


Landlord


Tenant

4501 Mitchell St., North Las Vegas, NV 89081
(702) 643-5690

Exhibit C

Exhibit C

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re: Superior Linen, LLC

Case No. 16-15388-mkn

**CHAPTER 11
MONTHLY OPERATING REPORT
(GENERAL BUSINESS CASE)**

SUMMARY OF FINANCIAL STATUS

MONTH ENDED: Nov-16PETITION DATE: 9/30/2016 17:09

1. Debtor in possession (or trustee) hereby submits this Monthly Operating Report on the Accrual Basis of accounting (or if checked here the Office of the U.S. Trustee or the Court has approved the Cash Basis of Accounting for the Debtor).

Dollars reported in \$1

	End of Current Month	End of Prior Month	As of Petition Filing
2. Asset and Liability Structure			
a. Current Assets	\$4,553,894	\$5,442,305	
b. Total Assets	\$9,085,326	\$14,114,659	\$13,901,523
c. Current Liabilities	\$3,107,685	\$2,561,304	\$6,909,904
d. Total Liabilities	\$24,973,496	\$24,031,829	\$22,894,484
			Cumulative
3. Statement of Cash Receipts & Disbursements for Month	Current Month	Prior Month	(Case to Date)
a. Total Receipts	\$1,546,090	\$1,700,290	\$3,246,380
b. Total Disbursements	\$1,570,578	\$1,555,625	\$3,126,202
c. Excess (Deficiency) of Receipts Over Disbursements (a - b)	(\$24,488)	\$144,665	\$120,178
d. Cash Balance Beginning of Month	\$38,136	\$38,136	\$38,136
e. Cash Balance End of Month (c + d)	\$13,648	\$182,801	\$158,314
			Cumulative
	Current Month	Prior Month	(Case to Date)
4. Profit/(Loss) from the Statement of Operations	(\$1,392,334)	(\$924,210)	(\$1,392,334)
5. Account Receivables (Pre and Post Petition)	\$1,301,236	\$1,484,112	
6. Post-Petition Liabilities	\$3,867,685	\$2,561,304	
7. Past Due Post-Petition Account Payables (over 30 days)	\$0	\$0	

At the end of this reporting month:

- | | Yes | No |
|--|-----|-----|
| 8. Have any payments been made on pre-petition debt, other than payments in the normal course to secured creditors or lessors? (if yes, attach listing including date of payment, amount of payment and name of payee) | | X |
| 9. Have any payments been made to professionals? (if yes, attach listing including date of payment, amount of payment and name of payee) | | X |
| 10. If the answer is yes to 8 or 9, were all such payments approved by the court? | | N/A |
| 11. Have any payments been made to officers, insiders, shareholders, relatives? (if yes, attach listing including date of payment, amount and reason for payment, and name of payee) | X | |
| 12. Is the estate insured for replacement cost of assets and for general liability? | X | |
| 13. Are a plan and disclosure statement on file? | | X |
| 14. Was there any post-petition borrowing during this reporting period? | X | |
15. Check if paid: Post-petition taxes X ; U.S. Trustee Quarterly Fees X ; Check if filing is current for: Post-petition tax reporting and tax returns: X .
(Attach explanation, if post-petition taxes or U.S. Trustee Quarterly Fees are not paid current or if post-petition tax reporting and tax return filings are not current.)

I declare under penalty of perjury I have reviewed the above summary and attached financial statements, and after making reasonable inquiry believe these documents are correct.

Date: 11/21/2016 0:00


Responsible Individual

Date	Amount	Name	Reason
------	--------	------	--------

Summary: Q#11

11/2/2016	\$ 2,427.00	BrightLight Holdings, LLC (Rick Keister)	Reimburse Travel expenses for ownership governance
11/2/2016	\$ 1,543.00	BrightLight Holdings, LLC (Rick Keister)	Reimburse Travel expenses for ownership governance
11/14/2016	\$ 3,950.00	BrightLight Holdings, LLC (Rick Keister)	Reimburse Travel expenses for ownership governance
11/23/2016	\$ 3,117.00	BrightLight Holdings, LLC (Rick Keister)	Reimburse Travel expenses for ownership governance
11/10/2016	\$ 4,615.38	Robert Smith - CFO	Payroll
11/10/2016	\$ 10,076.92	DW Doc Wiener - President / COO	Payroll
11/23/2016	\$ 4,615.38	Robert Smith - CFO	Payroll
11/23/2016	\$ 10,958.59	Chris McLemore - New President / COO	Payroll - This payment was not reviewed in time to be corrected and is in error. Mr. McLemore's salary is \$120k per year and was corrected in December.

STATEMENT OF OPERATIONS

(General Business Case)

For the Month Ended 11/30/16

Current Month				Cumulative (Case to Date)	Next Month Forecast
Actual	Forecast	Variance			
\$1,134,526		\$1,134,526	1 Revenues:	\$2,397,382	
\$4,810		(\$4,810)	2 Gross Sales	\$8,911	
\$1,129,716	\$0	\$1,129,716	3 less: Sales Returns & Allowances	\$2,388,471	\$0
\$1,814,501		(\$1,814,501)	4 Net Sales	\$3,199,226	
(\$684,785)	\$0	(\$684,785)	5 less: Cost of Goods Sold (Schedule 'B')	(\$810,755)	\$0
		\$0	6 Gross Profit		
		\$0	7 Interest		
		\$0	8 Other Income:	\$4,803	
		\$0	9 recovered after w/o receivable in 2011		
(\$684,785)	\$0	(\$684,785)	10 Total Revenues	(\$805,952)	\$0
			Expenses:		
\$15,308		(\$15,308)	11 Compensation to Owner(s)/Officer(s)	\$47,841	
\$24,151		(\$24,151)	12 Salaries	\$51,699	
\$950		(\$950)	13 Commissions	\$16,358	
		\$0	14 Contract Labor		
		\$0	Rent/Lease:		
\$35,510		(\$35,510)	15 Personal Property	\$1,411	
\$12,253		(\$12,253)	16 Real Property	\$69,964	
\$25,000		(\$25,000)	17 Insurance	\$24,506	
\$335,844		(\$335,844)	18 Management Fees	\$50,000	
			19 Depreciation / Amortization	\$669,182	
\$5,048		(\$5,048)	Taxes:		
		\$0	20 Employer Payroll Taxes	\$11,293	
\$4,121		(\$4,121)	21 Real Property Taxes		
\$130		(\$130)	22 Other Taxes -PP	\$9,027	
\$23,974		(\$23,974)	23 Other Selling	\$5,310	
\$185,729		(\$185,729)	24 Other Administrative	\$45,546	
\$11,375		(\$11,375)	25 Interest	\$374,882	
\$0		\$0	26 Other Expenses: Benefits	\$19,559	
\$5,833		(\$5,833)	27 Bad Debt	\$16,645	
\$689		(\$689)	28 Accrual for Audit	\$11,666	
\$4,640		(\$4,640)	29 R&M of Building	\$5,852	
\$16,993		(\$16,993)	30 Travel / Meals - Ownership Governance	\$11,018	
		\$0	31 Legal	\$16,993	
		\$0	32		
		\$0	33		
		\$0	34 W/O Siena loan deposit - Bank loan fees	\$26,515	
\$707,548	\$0	(\$707,548)	35 Total Expenses	\$1,485,266	\$0
(\$1,392,334)	\$0	(\$1,392,334)	36 Subtotal	(\$2,291,218)	\$0
		\$0	Reorganization Items:		
		\$0	37 Professional Fees	(\$25,000)	
		\$0	38 Provisions for Rejected Executory Contracts		
		\$0	39 Interest Earned on Accumulated Cash from Resulting Chp 11 Case		
		\$0	40 Gain or (Loss) from Sale of Equipment		
		\$0	41 U.S. Trustee Quarterly Fees	(\$325)	
		\$0	42		
\$0	\$0	\$0	43 Total Reorganization Items	(\$25,325)	\$0
(\$1,392,334)	\$0	(\$1,392,334)	44 Net Profit (Loss) Before Federal & State Taxes	(\$2,316,543)	\$0
		\$0	45 Federal & State Income Taxes		
(\$1,392,334)	\$0	(\$1,392,334)	46 Net Profit (Loss)	(\$2,316,543)	\$0

Attach an Explanation of Variance to Statement of Operations (For variances greater than +/- 10% only):

Liabilities and Equity
(General Business Case)

Liabilities From Schedules

Post-Petition

Current Liabilities

30	Salaries and wages		\$193,944
31	Payroll taxes		\$90,427
32	Real and personal property taxes		
33	Income taxes		
34	Sales taxes		\$6,978
35	Notes payable (short term)		
36	Accounts payable (trade)	A	\$322,604
37	Post Petition Interest		\$327,198
38	Personal property lease arrearage		
39	Accrued professional fees		\$25,000
40	Current portion of long-term post-petition debt (due within 12 months)		
41	Other: Accrued Vacation		\$130,255
42	City North Las Vegas Permit		\$828,619
43	2016 GAAP accruals		\$1,182,660
44	Total Current Liabilities		\$3,107,685

45	Long-Term Post-Petition Debt, Net of Current Portion		\$760,000
46	Total Post-Petition Liabilities		\$3,867,685

Pre-Petition Liabilities (allowed amount)

47	Secured claims	F	\$18,526,961
48	Priority unsecured claims	F	\$0
49	General unsecured claims	F	\$2,578,849
50	Total Pre-Petition Liabilities		\$21,105,811
51	Total Liabilities		\$24,973,496

Equity (Deficit)

52	Retained Earnings/(Deficit) at time of filing		(\$9,810,798)
53	Capital Stock		
54	Additional paid-in capital		
55	Cumulative profit/(loss) since filing of case		(\$2,316,543)
56	Post-petition contributions/(distributions) or (draws)		
57	Warrants un-exercised		\$307,946
58	Market value adjustment		(\$4,068,775)
59	Total Equity (Deficit)		(\$15,888,170)
60	Total Liabilities and Equity (Deficit)		\$9,085,326
			(\$0)

BALANCE SHEET
(General Business Case)
For the Month Ended 11/30/16

Assets		<u>From Schedules</u>	<u>Market Value</u>
Current Assets			
1	Cash and cash equivalents - unrestricted		\$103,217
2	Cash and cash equivalents - restricted		
3	Accounts receivable (net)	A	\$1,301,236
4	Inventory	B	\$2,976,101
5	Prepaid expenses		\$71,547
6	Professional retainers		\$0
7	Other: <u>Loss charges / misc.</u>		\$101,792
8			
9	Total Current Assets		\$4,553,894
Property and Equipment (Market Value)			
10	Real property	C	\$0
11	Machinery and equipment	D	\$2,106,700 *
12	Furniture and fixtures	D	\$22,679
13	Office equipment	D	\$0
14	Leasehold improvements	D	\$288,690
15	Vehicles	D	\$7,000 *
16	Other: _____	D	
17	_____	D	
18	_____	D	
19	_____	D	
20	_____	D	
21	Total Property and Equipment		\$2,425,070
Other Assets			
22	Loans to shareholders		\$86,895
23	Loans to affiliates		
24	Net of Amortization - Advantage, Inc. loan fee		\$43,630
25	Net of Amortization - Commissions & Contract Sign-on bonus		\$594,091
26	Net of Amortization - City Permit for water / Sewer		\$1,124,490
27	Security Deposits		\$257,257
28	Total Other Assets		\$2,106,363
29	Total Assets		\$9,085,326

NOTE:

Indicate the method used to estimate the market value of assets (e.g., appraisals; familiarity with comparable market prices, etc.) and the date the value was determined.

* Appraisal dated 4/8/16 by Gordon Bros. using Orderly liquidated Value.

SCHEDULES TO THE BALANCE SHEET
(General Business Case)

Schedule A

Accounts Receivable and (Net) Payable

Receivables and Payables Agings	Accounts Receivable [Pre and Post Petition]	Accounts Payable [Post Petition]	Past Due Post Petition Debt
0 -30 Days	\$1,066,376	\$322,604	
31-60 Days	\$120,656	\$0	
61-90 Days	\$35,450	\$0	\$0
91+ Days	\$101,843	\$0	
Total accounts receivable/payable	\$1,324,324	\$322,604	
Allowance for doubtful accounts	\$23,088		
Accounts receivable (net)	\$1,301,236		

Schedule B

Inventory/Cost of Goods Sold

Types and Amount of Inventory(ies)	Inventory(ies) Balance at End of Month	Cost of Goods Sold	
		Inventory Beginning of Month	
Retail/Restaurants -		Add -	
Product for resale	\$0	Net purchase	\$1,294,545
		Direct labor	\$543,926
Distribution -		Manufacturing overhead	
Products for resale	\$0	Freight in	
		Other:	
		Add Loss Charges Accrued / Billed	(\$23,969)
Manufacturer -			
Raw Materials	\$0		
Work-in-progress	\$0		
Finished goods	\$0		
Other - Explain	\$2,976,101	Less -	
Net Book Linen (Linen used for rental income)		Inventory End of Month	
		Shrinkage	
		Personal Use	
		Cost of Goods Sold	\$1,814,501
TOTAL	\$2,976,101		

Method of Inventory Control

Do you have a functioning perpetual inventory system?

Yes _____ No x

How often do you take a complete physical inventory?

Weekly _____

Monthly x

Quarterly _____

Semi-annually _____

Annually _____

Date of last physical inventory was 11/30/2016 0:00

Date of next physical inventory is 12/31/2016 0:00

Inventory Valuation Methods

Indicate by a checkmark method of inventory used.

Valuation methods -

FIFO cost _____

LIFO cost _____

Lower of cost or market _____

Retail method _____

Other _____

Explain _____

Schedule C
Real Property

Description	<u>Cost</u>	<u>Market Value</u>
Total	\$0	\$0

Schedule D
Other Depreciable Assets

Description	<u>Cost</u>	<u>Market Value</u>
Machinery & Equipment -		
Various	\$8,203,810	\$2,106,700
Total	\$8,203,810	\$2,106,700
Furniture & Fixtures -		
Miscellaneous	\$105,526	\$22,679
Total	\$105,526	\$22,679
Office Equipment -		
Total	\$0	\$0
Leasehold Improvements -		
Miscellaneous	\$369,980	\$288,690
Total	\$369,980	\$288,690
Vehicles -		
Step Side Truck (purchased used 4/4/12)	\$7,625	\$7,000
Total	\$7,625	\$7,000

Schedule E
Aging of Post-Petition Taxes
(As of End of the Current Reporting Period)

Taxes Payable	0-30 Days	31-60 Days	61-90 Days	91+ Days	Total
Federal					
Income Tax Withholding	\$20,341				\$20,341
FICA - Employee	\$22,542				\$22,542
FICA - Employer	\$22,542				\$22,542
Unemployment (FUTA)	\$588				\$588
Income					\$0
Other (Attach List)					\$0
Total Federal Taxes	\$66,013	\$0	\$0	\$0	\$66,013
State and Local					
Income Tax Withholding					\$0
Unemployment (UT)	\$4,937				\$4,937
Disability Insurance (DI)					\$0
Empl. Training Tax (ETT)					\$0
Sales					\$0
Excise					\$0
Real property					\$0
Personal property					\$0
Other (CLP)	\$120				\$120
Other (Bond)	\$1,445				\$1,445
Total State & Local Taxes	\$6,502	\$0	\$0	\$0	\$6,502
Total Taxes	\$72,515	\$0	\$0	\$0	\$72,515

Schedule F
Pre-Petition Liabilities

List Total Claims For Each Classification -	Claimed Amount	Allowed Amount (b)
Secured claims (a)	\$18,526,961	\$18,526,961
Priority claims other than taxes		\$0
Priority tax claims		
General unsecured claims	\$2,578,849	\$2,578,849

- (a) List total amount of claims even if under secured.
- (b) Estimated amount of claim to be allowed after compromise or litigation. As an example, you are a defendant in a lawsuit alleging damage of \$10,000,000 and a proof of claim is filed in that amount. You believe that you can settle the case for a claim of \$3,000,000. For Schedule F reporting purposes you should list \$10,000,000 as the Claimed Amount and \$3,000,000 as the Allowed Amount.

Schedule G
Rental Income Information
Not applicable to General Business Cases

Schedule H
Recapitulation of Funds Held at End of Month

	Account 1	Account 2	Account 3	Account 4	Account 5
Bank	B of A	B of A	B of A	NSB	NSB
Account Type	Checking	Checking	Checking	Checking	Checking
Account No.	8576	8589	8592	7106	7114
Account Purpose	Operating	Payroll / PR Taxes	Owners	Operating	Payroll / PR Taxes
Balance, End of Month	\$58,225	\$33,250	\$54,388	\$0	\$0
Total Funds on Hand for all Accounts	\$145,864				

Attach copies of the month end bank statement(s), reconciliation(s), and the check register(s) to the Monthly Operating Report.

STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS

Increase/(Decrease) in Cash and Cash Equivalents

For the Month Ended 11/30/16

	Actual Current Month	Cumulative (Case to Date)
Cash Receipts		
1 Rent/Leases Collected	\$9,784	\$19,599
2 Cash Received from Sales	\$1,336,306	\$2,516,289
3 Interest Received		
4 Borrowings	\$200,000	\$710,000
5 Funds from Shareholders, Partners, or Other Insiders		
6 Capital Contributions		
7 Misc.		\$492
8		
9		
10		
11		
12 Total Cash Receipts	\$1,546,090	\$3,246,380
Cash Disbursements		
13 Payments for Inventory	\$141,755	\$280,927
14 Selling		
15 Administrative		
16 Capital Expenditures	\$0	\$152,611
17 Principal Payments on Debt		
18 Interest Paid		
Rent/Lease:		
19 Personal Property	\$96,812	\$96,812
20 Real Property	\$45,294	\$89,563
Amount Paid to Owner(s)/Officer(s)		
21 Salaries	\$30,266	\$65,914
22 Draws		
23 Commissions/Royalties	\$12,595	\$12,595
24 Expense Reimbursements	\$7,299	\$8,789
25 Other		
26 Salaries/Commissions (less employee withholding)	\$603,298	\$1,326,219
27 Management Fees		
Taxes:		
28 Employee Withholding	\$123,801	\$248,871
29 Employer Payroll Taxes	\$74,586	\$152,690
30 Real Property Taxes		
31 Other Taxes- \$30120 Modified Business Tax; \$16,871 Sales tax	\$46,991	\$92,347
32 Other Cash Outflows:		
33 Outside Production	\$147,517	\$253,410
34 Benefits - Healthcare	\$35,844	\$72,697
35 Insurance - Business / WC	\$20,990	\$42,364
36 Production Supplies	\$67,719	\$86,361
37 Misc. -Util.(\$10k) G&A (\$13k), Misc. (\$13k), R&M (\$66k), Rentals, Tel/Intrt (\$8k)	\$115,810	\$144,032
38 Total Cash Disbursements:	\$1,570,578	\$3,126,202
39 Net Increase (Decrease) in Cash	(\$24,488)	\$120,178
40 Cash Balance, Beginning of Period	\$38,136	\$38,136
41 Cash Balance, End of Period	\$13,648 *	\$158,314

12:02 PM
12/09/16**Superior Linen, LLC**
Reconciliation Summary

10050 · BofA - Operating Account #8576, Period Ending 11/30/2016

	Nov 30, 16
Beginning Balance	90,136.82
Cleared Transactions	
Checks and Payments - 220 ite...	-728,632.50
Deposits and Credits - 48 items	696,720.90
Total Cleared Transactions	-31,911.60
Cleared Balance	58,225.22
Uncleared Transactions	
Checks and Payments - 17 items	-44,146.05
Total Uncleared Transactions	-44,146.05
Register Balance as of 11/30/2016	14,079.17
New Transactions	
Checks and Payments - 80 items	-277,570.02
Deposits and Credits - 8 items	110,000.00
Total New Transactions	-167,570.02
Ending Balance	-153,490.85